

Mr. Mark Lynch
122 Maryland Ave., NE
Washington, D.C. 20002

9/13/85

Dear Mark,

When I was in DC Wednesday for my regular surgeon's checkup Jim met me briefly for reasons having nothing to do with any litigation and our conversation in the coffee shop also had nothing to do with litigation. Then, when he was walking me back to my transportation, he asked me if I'd heard anything from the court. I have not, as of today. He said he'd seen you a while back and that you also had not heard anything after you filed your motion to be excused. I had not given that any thought, believing it would be automatic. I asked Jim what it means and as I now recall he was not certain but wondered if Smith has something in mind, like appointing counsel for me. (He may also have indicated that this may not mean anything at all but I'm not now clear on this.) I gave the matter no further thought, probably thinking that it has no meaning. Only when I was recounting what the surgeon had said and my visit with Jim to my wife did it occur to me and to her that this ~~idea~~ is unfair to you. Both the indefiniteness and the fact that you have done, meaning put more time in on this, than had been originally agreed to. And this is why I write.

If by any chance Smith does intend to appoint counsel and if he has not agreed to release you, can he possibly have in mind having you continue as my counsel? That, if you are too busy or just do not want to, also would be very unfair to you.

Don't misunderstand me. I know I'll be better off with a lawyer and not acting as my own, but I feel that if he does have this in mind you ought not be subject to compulsion. Nobody ought decide for you how you spend your time. That only you can evaluate and only you ought decide. So, if he does pull anything like that and you do not want to, I'll object.

I've prepared what will serve as my Memorandum of Points and Authorities and when I see just how he turns me down, which is what I expect, I'll prepare a Motion and whatever else seems to be indicated and will file as rapidly as possible. I invoke Rules 52 and 59, amplified by what DJ omitted of Rule 60(b) in representing an inflexible one-year time limitation under it, which is opposite the language and intent of its last three clauses.

DiGenova has not responded to my letter and I'll probably write him again soon.

I did mention to Jim that if I do not hear from Smith soon I may want to file a mandamus, as I suppose just about nobody would consider. This comes not from my nonexistent knowledge of any law but from long experience of the past. Jim did not offer any opinion but I suppose he considers it a waste of time. But I've faced overwhelming power before and came to believe that the weak never survive the strong if they sit back and try to defend only.

Jim and I were together for only a brief period and he forgot to mention something of which I was informed yesterday that may interest you or others you know. Earl Warren's papers are now available at the Library of Congress and Bud Fensterwald is in touch with someone working in them. A reporter I know is also in them, thinking of a magazine piece.

If as I think I sent you a copy of my letter to Judge Bell, the Cleveland court returned it as "unable to forward," some 30 miles, to Akron. I later sent a copy to him at Akron. (I have never heard of any disclosures from the FBI's "Top Echelon Informants Committee" records and have seen only the one reference to its existence.)

Best wishes,